

OCT 18 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALFREDO VILLA-CARDENAS,

Petitioner-Appellant,

v.

CRAIG FARWELL, Warden, Lovelock
Correctional Center, Nevada,

Respondent-Appellee.

No. 04-16776

D.C. No. CV-01-00311-ECR

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Nevada
Edward C. Reed, District Judge, Presiding

Submitted October 11, 2005^{**}

Before: T.G. NELSON, WARDLAW, and TALLMAN, Circuit Judges.

Nevada state prisoner Alfredo Villa-Cardenas appeals the district court's judgment denying his 28 U.S.C. § 2254 petition. We have jurisdiction pursuant to

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

28 U.S.C. § 2253,¹ and we affirm.

Villa-Cardenas contends that the district court was required to consider and advise him of the option of staying his exhausted claims while he returned to state court to exhaust his unexhausted claims, in light of *Kelly v. Small*, 315 F.3d 1063, 1070-71 (9th Cir. 2003).

We disagree. A federal district court need not explain habeas procedure to a litigant. *See Pliler v. Ford*, 124 S. Ct. 2441, 2445-46 (2004) (holding that a district court is not required to give a pro se litigant warnings about stay-and-abeyance procedure); *Jefferson v. Budge*, No. 03-16932, 2005 WL 1949886 at *2-3 (9th Cir. Aug. 16, 2005).

AFFIRMED.²

¹ The government contends that we are without jurisdiction to hear this appeal. However, “once [the certificate of appealability] is issued, we have jurisdiction even if the certificate was arguably improvidently granted.” *Phelps v. Alameda*, 366 F.3d 722, 726 (9th Cir. 2004) (internal quotations and citations omitted). The government’s remaining contentions are similarly rejected.

² Villa-Cardenas seeks to expand the certificate of appealability (“COA”). We decline to expand the COA because Villa-Cardenas fails to make a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).